

FILED
MAR - 7 2012
 Clerk, U.S. District & Bankruptcy
 Courts for the District of Columbia

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

PETER DESILVA,
 7428 Bluffs Lane, Apt. B3
 Annapolis, MD 21403

Plaintiff,

v.

U.S. DEPARTMENT OF HOUSING
 AND URBAN DEVELOPMENT,
 451 7th Street, S.W.
 Washington, D.C. 20410,

Defendant.

Case: 1:12-cv-00366
 Assigned To : Walton, Reggie B.
 Assign. Date : 3/7/2012
 Description: FOIA/Privacy Act

COMPLAINT

Nature of Action, Jurisdiction and Venue

1. This is an action under the Freedom of Information Act, ("FOIA"), 5 U.S.C. § 552, as amended, for injunctive, declaratory and other appropriate relief to compel the disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of Housing and Urban Development ("HUD").

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue lies in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

3. Plaintiff Peter DeSilva has owned the property located at 2648 Naylor Road, S.E., Washington, D.C. 20020. This property is located in the Skyland Shopping Center. HUD funds were used to acquire this property by eminent domain.

4. Defendant HUD is a Department of the Executive Branch of the United States Government and is an “agency” as that term is defined in 5 U.S.C. § 552(f). HUD has possession and control of the records that Mr. DeSilva seeks.

Plaintiff’s FOIA Request and Agency Response

5. On June 22, 2011, plaintiff, through undersigned counsel, submitted a FOIA request (attached hereto as Exhibit 1) to Belinda J. Fadlilmola for records concerning the project involving the Skyland Shopping Center.

6. By letter dated September 8, 2011 (attached hereto as Exhibit 2), FOIA Liaison, HUD District of Columbia Office, responded to the FOIA request. The response states that HUD had determined there were no documents related to plaintiff’s request.

Plaintiff’s FOIA Appeal and Agency Response

7. By letter dated October 5, 2011 (attached hereto as Exhibit 3), plaintiff, through undersigned counsel, submitted a FOIA appeal to Sheryl L. Johnson, Regional Counsel, HUD.

8. By letter dated November 7, 2011 (attached hereto as Exhibit 4), Barbara A. Potts stated that the pertinent HUD offices have no documents responsive to plaintiff’s request.

9. Plaintiff has exhausted the administrative remedies with regard to this FOIA request. HUD’s failure to disclose the records sought by plaintiff violates FOIA.

Prayer for Relief

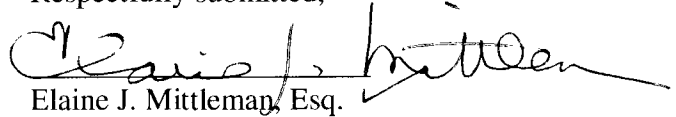
Wherefore, plaintiff prays that this Court:

A. order defendant to disclose the requested records in their entirety and make copies available to plaintiff;

B. issue a declaration that plaintiff is entitled to disclosure of the requested records;

- C. award plaintiff costs and reasonable attorney's fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elaine J. Mittleman", written over a horizontal line.

Elaine J. Mittleman, Esq.
D.C. Bar # 317172
Counsel for Peter DeSilva
2040 Arch Drive
Falls Church, VA 22043
(703) 734-0482

Exhibit 1

FOIA request on behalf of my client Peter DeSilva

From: **Elaine Mittleman** (elainemittleman@msn.com)

Sent: Wed 6/22/11 4:31 PM

To: Belinda Faddeimola (belinda.j.faddeimola@hud.gov)

Re: Elaine Mittleman (elainemittleman@msn.com)

Belinda - This is a Freedom of Information Act request on behalf of my client Peter DeSilva. He was one of the property owners at Skyland Shopping Center.

I am requesting records in your office concerning the Skyland project. This request includes documents, memoranda, emails and notes about conversations between persons in your office and the District of Columbia concerning the project at Skyland Shopping Center.

I am requesting records concerning the compliance of the Skyland project with the national objectives, including benefiting low and moderate income persons.

I am requesting records concerning the Annual Plan and/or Action Plan through which funding for Skyland was provided, including CDBG funds and program funds.

I am requesting records concerning the appraisals performed on the properties at Skyland and records concerning the HUD regulations and guidelines for those appraisals. I am requesting any appraisal reviews conducted for the properties at Skyland.

I am requesting records concerning the timeline of the Skyland project. I am requesting records concerning the status of the Skyland project, including records, emails or documents about the Skyland project being involved in litigation.

I am requesting records concerning the relocation payments and assistance to Skyland businesses and tenants under the Uniform Relocation Act.

I am willing to pay a search fee of up to \$25. I am also requesting a fee waiver, because I believe that this information is in the public interest as it concerns the use of government funds.

I am requesting that this request be responded to in a timely manner.

Thank you for your assistance.

Elaine Mittleman

Elaine Mittleman, Esq.

Law Office of Elaine Mittleman
2040 Arch Drive
Falls Church, VA 22043
(703) 734-0482
elainemittleman@msn.com

The information contained in this message may include sensitive or attorney work product information.
If you received this message in error, please notify the sender immediately.

Exhibit 2



U.S. Department of Housing and Urban Development
District of Columbia Office
820 First Street, NE
Washington, DC 20002-4205

September 8, 2011

Ms. Elaine Mittleman, Esq.
Law Office of Elaine Mittleman
2040 Arch Drive
Falls Church, VA 22043

RE: Freedom of Information Act (FOIA) Request
FOIA Control No.: 11-FI-R03-02593

Dear Ms. Mittleman:

This letter is in response to your original FOIA request received via email, on June 22, 2011. The FOIA, on behalf of your client, Mr. Peter DeSilva, requests the following information and/or documents

1. *Documents, memoranda, emails and notes about conversations between persons in your office and the District of Columbia concerning the project at Skyland Shopping Center.*
2. *Records concerning the compliance of the Skyland project with the national objectives, including benefiting low and moderate income persons.*
3. *Records concerning the Annual Plan and/or Action Plan through which funding for Skyland was provided, including CDBG funds and program funds.*
4. *Records concerning the appraisals performed on the properties at Skyland and records concerning the HUD regulations and guidelines for those appraisals and/or any appraisal reviews conducted for the properties at Skyland.*
5. *Records concerning the timeline of the Skyland project; records concerning the status of the Skyland project, including records, emails or documents about the Skyland project being involved in litigation.*
6. *Records concerning the relocation payments and assistance to Skyland businesses and tenants under the Uniform Relocation Act.*

When responding to a FOIA request, HUD searches for responsive documents existing up-to-the date the request is received in the HUD DC Field Office's FOIA Division. Your request was received on June 22, 2011. Our office notified you on August 9, 2011 that I, the FOIA Liaison, was consulting with the incoming new director of the Office of Community

Planning and Development regarding your request. Based on our search and consultation with the Office of Community Planning and Development, we have determined there are no responsive documents related to your request.

As our office has indicated in our previous response to your FOIA requests related to the Skyland Shopping Center, our office is not in possession of documents related to this project and you may contact the *Government of the District of Columbia's Department of Housing and Community Development (DHCD)* and the *Deputy Mayor for Planning and Economic Development*. You may request the action plans that contain information related to the project from DHCD; and the Deputy Mayor's for Planning and Economic Development should have information on the current timeline, and other pertinent information related to your request. As we have stated in our previous response, FOIA Control Number 11-FI-R03-1946, you can submit a request for documents to the Government of the District of Columbia's Department of Housing and Community Development Freedom of Information Officer:

Ms. Vonda J Orders, General Counsel
1800 Martin Luther King, Jr. Ave., SE
Washington, DC 20020,
(202) 442-6991

You may also request a documents from the FOIA Officer of the Deputy Mayor's for Planning and Economic Development:

Ayesha Abbasi
DMPED
1350 Pennsylvania Avenue NW Suite 317
Washington , DC 20004
Ayesha.Abbasi@dc.gov
Phone: (202) 727-6365
Fax: (202) 727-6703

You are advised that pursuant to federal law, an agency's determination that it has no records which are responsive to a FOIA request constitutes an adverse determination under the Freedom of Information Act, at 5 U.S.C. (a)(6)(A)(i). As the FOIA Liaison, I am the official responsible for this determination based on the information provided by the Office of General Counsel and the Office of Community Planning and Development. Accordingly, you may request an administrative appeal of this determination, provided the request for appeal is filed within thirty days after issuance of this letter. Should you desire to appeal, your request should be mailed to:

Sheryl L. Johnson, Regional Counsel
U.S. Department of Housing and Urban Development
The Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107-3380

Please include i) a copy of your letter of request, ii) a copy of this letter, and iii) a statement of the circumstances, reasons, or arguments in support of your original request for disclosure of the records requested.

In order to enable the Department to comply with the time limitations set forth in 24 C.F.R. Section 15.112, the envelope containing the request for review and the letter should be plainly marked that the subject is a FOIA request Appeal. Upon timely receipts, review will be made promptly by the Regional Counsel on the basis of the written record described in 24 C.F.R. Section 15.111. The decision after review will be in writing and will constitute final action by the Department on this request.

Your FOIA request, including your identity and any information made available, is releasable to the public under subsequent Freedom of Information Act requests. In responding to these requests, the Department does not release personal privacy information such as home address, telephone number, or social security number, all of which are protected from disclosure under FOIA Exemption 6.

Thank you for your interest in the Department's policies and programs.

Sincerely,

Belinda J. Faddeh
FOIA Liaison

Exhibit 3

ELAINE J. MITTLEMAN
ATTORNEY AT LAW
2040 Arch Drive
Falls Church, VA 22043
Telephone (703) 734-0482
E-mail elainemittleman@msn.com
Admitted in the District of Columbia; Not Admitted in Virginia

October 5, 2011

Sheryl L. Johnson
Regional Counsel
U.S. Department of Housing and Urban Development
The Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107-3380

Re: Freedom of Information Act Appeal
FOIA Control No. 11-FI-R03-02593

Dear Ms. Johnson:

This is an appeal under the Freedom of Information Act.

I submitted a FOIA request (enclosed herein) by email dated June 22, 2011, on behalf of my client, Peter DeSilva, to the District of Columbia Office of the U.S. Department of Housing and Urban Development ("HUD"). The request is identified by FOIA Control No. 11-FI-R03-02593. The FOIA request concerned records related to the Skyland Shopping Center project in Southeast Washington, D.C. That project is a District of Columbia project which uses Community Development Block Grant ("CDBG") funds. Mr. DeSilva has been one of the property owners at Skyland.

I received a response by letter dated September 8, 2011 (enclosed herein), from Belinda J. Fadlelmola, FOIA Liaison, District of Columbia Office, HUD. In the letter dated September 8, 2011, Ms. Fadlelmola stated that "Based on our search and consultation with the Office of Community Planning and Development, we have determined there are no responsive documents related to your request."

A FOIA search must be reasonably calculated to uncover all relevant documents. *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). The adequacy of a FOIA search is determined by the appropriateness of the methods used to carry out the search. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

In the response dated September 8, 2011, Ms. Fadlelmola simply referred to "our

search” and “consultation with the Office of Community Planning and Development.” The search methods and filing systems were not described and no information was given as to the types of records or filing systems that were searched.

Enclosed herein are FOIA responses from two agencies of the District of Columbia government. They are a response dated September 30, 2011, from the D.C. Department of Housing and Community Development and a response dated October 4, 2011, from the Office of the Deputy Mayor for Planning and Economic Development. The FOIA response dated September 8, 2011, referred me to those offices. The U.S. Department of Housing and Urban Development is a federal agency. A FOIA request to HUD is not properly answered simply by referring a FOIA requester to a municipal government agency.

Also enclosed is correspondence with HUD officials. In a letter dated September 26, 2008, Assistant Secretary Susan D. Pepler suggested contacting Ms. Frances W. Bush, Community Planning and Development Division Director in the HUD District of Columbia Field Office. Ms. Pepler stated that “Ms. Bush and her staff are responsible for oversight of the District of Columbia’s CDBG program.”

In a letter dated January 28, 2009, Robert L. Ashworth, Office of Inspector General, HUD, stated that “we are referring your information to the HUD Field Office in Washington, D.C.”

In a letter dated September 6, 2011, Yolanda Chavez, Deputy Assistant Secretary for Grant Programs, HUD, stated that the “Department has included the Skyland Shopping Center as a CDBG-assisted activity that it will monitor during this current fiscal year.”

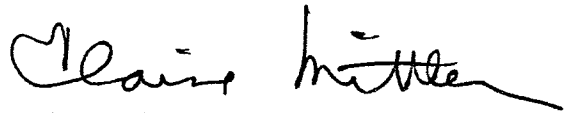
If the District of Columbia Field Office is responsible for oversight of the District of Columbia’s CDBG program, it seems that the Field Office must have documents relating to the Skyland Shopping Center project, which was funded by CDBG funds. The FOIA response from the D.C. Department of Housing and Community Development stated at page 1 that “HUD would be the appropriate party to determine compliance of the Skyland project with the national objectives of the Community Development Block Grant (CDBG) program.” Moreover, I have communicated with Ms. Bush by email. Those emails and related documents should be released in a FOIA request.

I am requesting a fee waiver. Disclosure of documents about CDBG fund programs is in the public interest because the information will contribute to public understanding of oversight and management of CDBG fund programs.

I am requesting that information which can be segregated from withheld documents also be released. I am also requesting that any documents created or received subsequent to my FOIA request also be included in this appeal.

I would appreciate a timely response to this appeal. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Mittleman". The signature is fluid and cursive, with the first name "Elaine" written in a larger, more prominent script than the last name "Mittleman".

Elaine Mittleman

Enclosures

Exhibit 4



NOV 07 2011

U.S. Department of Housing and Urban Development

Office of the Regional Counsel
Philadelphia Office
The Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3380

Elaine J. Mittleman, Esq.
2040 Arch Drive
Falls Church, Virginia 22043

Re: Freedom of Information Act Appeal
FOIA Control No: 11-FI-R03-02593
FOIA Appeal No.: 12-A-RO3-00001

Dear Ms. Mittleman:

This is written in response to your Freedom of Information Act (FOIA) appeal dated October 5, 2011. Your appeal concerns a FOIA response letter dated September 8, 2011, from the District of Columbia Field Office (DCFO) stating that there were no responsive documents to your request.

Your original request was dated June 22, 2011, and requested items 1 through 6 listed below. Your appeal indicated your concern with the lack of responsive documents and nature of the search conducted. To address these concerns, I contacted the Director and Deputy Director of the Office of Block Grant Assistance in HUD Headquarters, the FOIA Liaison, the Associate Regional Counsel for Housing Finance and Programs and the Director of Community Planning and Development (CPD) for the DCFO. The Office of Block Grant Assistance conducted a search of their files and had no responsive documents to your request. A search of the DCFO CPD files was also conducted, the CPD Director's responses to your questions are indicated below in **bold**.

1. I am requesting records in your office concerning the Skyland project. This request includes documents, memoranda, emails and notes about conversations between persons in your office and the District of Columbia concerning the project at Skyland Shopping Center.

Response: CPD DC Field Office has no records, mentioned above, pertaining to the Skyland project.

2. I am requesting records concerning the compliance of the Skyland project with the national objectives, including benefiting low and moderate income persons.

Response: CPD DCFO recently completed a monitoring review of the Skyland project. At this date, a report has not been developed regarding the results of the review.

3. I am requesting records concerning the Annual Plan and/or Action Plan through which funding for Skyland was provided, including CDBG funds and program funds.

Response: Based on prior knowledge, Action Plans pertaining to the Skyland project had already been provided to Ms. Mittleman; therefore, it was not provided in HUD's official response. Actions Plans are public documents which are posted on the website of DC's DHCD and also in their possession.

4. I am requesting records concerning the appraisals performed on the properties at Skyland and records concerning the HUD regulations and guidelines for those appraisals. I am requesting any appraisal reviews conducted for the properties at Skyland.

Response: CPD DC Field Office has no records, mentioned above, pertaining to the Skyland project.

5. I am requesting records concerning the timeline of the Skyland project. I am requesting records concerning the status of the Skyland project, including records, emails or documents about the Skyland project being involved in litigation.

Response: CPD DC Field Office has no records, mentioned above, pertaining to the Skyland project.

6. I am requesting records concerning the relocation payments and assistance to Skyland businesses and tenants under the Uniform Relocation Act.

Response: CPD DC Field Office has no records, mentioned above, pertaining to the Skyland project.

As indicated above, the pertinent HUD offices have no documents responsive to your request. In addition, in response to item 3 above, records concerning Annual Action Plans can be found at the links below.

FY 2012 Action Plan:

http://www.dhcd.dc.gov/dhcd/frames.asp?doc=/dhcd/lib/dhcd/pdf/final_fy_2012_action_plan_with_hopwa.pdf : Page 56

FY 2011 Action Plan:

<http://newsroom.dc.gov/show.aspx?agency=dhcd§ion=2&release=20336&year=2010&file=file.aspx%2frelease%2f20336%2f02%2520Appendix%2520A%2520DC%2520FY11%2520Action%2520Plan.pdf> : Page 51

You also requested a fee waiver. However, no fee was charged in this matter so a fee waiver is not necessary.

Judicial review of this determination under 5 U.S.C. § 552(a)(4)(B) is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, in the District of Columbia, or in the judicial district where the records you seek are located. 5 U.S.C. § 552(a)(4)(B)(2011).

D-713.1 (02/03)